

SHIP ARREST IN ISRAEL



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1. Please give an overview of ship arrest practice in your country.

1.1 Sources of the Admiralty Court's Jurisdiction

The jurisdiction of the Israel Admiralty Court (which sits in Haifa) is established by the 1840 and 1861 English Admiralty Acts. These acts were extended to the Dominions and Possessions of the United Kingdom by the Colonial Courts of the Admiralty Act 1890. Under the Palestine Admiralty Jurisdiction Order of 1937 these acts were extended to Palestine, then a British mandated Territory.

When the State of Israel was established in 1948, under the Law and Administration Ordinance, the Admiralty Court Acts of 1840 and 1861 became part of the domestic legislation of the newly established State.

In the year 1960 the Israel Shipping Law (Vessels) was enacted. Section 41 of this law determines the Maritime Liens and their priorities, as follows:

- (1) The official expenses of selling a vessel pursuant to a judicial sale,
- (2) Port and port related charges and expenses,
- (3) The costs of preserving a vessel pending Judicial sale,
- (4) Payments due to the master and crew including damages for personal injury,
- (5) Salvage expenses relating to the vessel, its cargo and equipment on board and expenses incurred in saving the lives of the crew and passengers.
- (6) Damages for personal injuries to passengers
- (7) Damages resulting from collisions or damage caused by the vessel to port installations and buildings, dry docks, and loss or damage to cargo and to passengers personal effects,
- (8) Mortgages - no distinction is drawn between a local or foreign registered Mortgage,
- (9) Necessaries.

The question of the existence of a Maritime Lien or a Statutory Claim in Rem is determined by the "Lex Causa" and the priorities, being procedural by the the "Lex Fori". If a party wants to prove the Lex Causa this is done by providing the Court with an expert opinion. If no such opinion is provided in accordance with the identity of a laws principle, Israel law will be applicable.

Two significant Judgements have been handed down by the Admiralty Court over the past year.

In the first, the Court held that a bunker carrier who supplied bunkers to a vessel ordered through an intermediary trader did not have a maritime lien for necessities as the vessel had effected full payment to the intermediary supplier. This Judgement is under Appeal to the Supreme Court.

In the second, the Court held, following the applicability of the jurisdiction of the English Admiralty Courts under the Colonial Courts Act 1890 and the extension of this jurisdiction to Palestine, under the Admiralty Jurisdiction Order of 1937 and the adoption thereof as Israeli law under the Israel law and Administration Act of 1948 (all as mentioned in the above preamble to this clause) – the Israel Admiralty Court had jurisdiction to act as a "Prize Court" and to order that a vessel which had been

detained whilst attempting to breach the Israel naval blockade over Gaza (which blockade has been deemed to be lawful under international law – the “San Remo” Protocol) was subject to confiscation. However under the circumstances of the particular matter, the Court did not order confiscation and ordered that the vessel be returned to its owner.

1.2 The Application for Arrest

The Application for Arrest must be filed with the Claim in Rem.

The Application must be supported by an Affidavit. In practice a scanned Affidavit confirmed in front of the foreign lawyer or by an Israeli lawyer (by fax or e-mail) will be sufficient. Additionally the Affidavit can be given by the arresting attorney. Copies of all the relevant documents in support of the arrest are attached to the Affidavit.

A Power of Attorney is not required.

The Court has a discretion to order that the arresting party furnish security. The Court will order so on rare occasions such as when there is a serious doubt as to the validity of the documents constituting the application for arrest.

Special mention should be made of the Haifa Admiralty Court’s rather liberal attitude when ordering an arrest for necessities. The Court will order an arrest even if the necessities were not supplied directly by the Claimant (for example when they were supplied by a subcontractor or a local agent) and even if the Master did not sign the agreement for the supply of the necessities.

The arrest procedure is relatively swift and the arrest can be effected within 24 hours of receiving instructions.

If the application is made on a Saturday or Public holiday, this period may be extended as a result of the necessity to appear before the roster Judge and obtaining the formal Order of Arrest which is issued by the Marshal of the Admiralty Court.

The Order of Arrest will be normally discharged by the provision of a P&I Club or other acceptable guarantee. In the latter case this would be normally a local bank guarantee.

The Vessel can apply to set aside the Arrest by contesting the merits of the claim or, on the grounds that the claim does not constitute a maritime lien or a statutory right in Rem under the Lex Causa or that the Admiralty Court does not have jurisdiction.

In order to avoid delay to the vessel, security can be furnished without prejudice and subject to the vessel’s rights to contest the Arrest and to have the security provided cancelled.

Upon serving the Order of Arrest on the vessel’s Command, the Port Authority and Border Police, the Arrest becomes effective.

1.3 Court Fees and Legal Costs

The Court fees payable are 2.5% of the amount claimed in the Claim in Rem of which half is payable at the time of filing the claim. No additional Court fee is payable for the Application for Arrest.

The legal fees for attending to the Arrest excluding VAT (at present 18%) and disbursements, are between US\$3,000.- and US\$6,500.-, depending on the complexity and urgency of the matter.

2. Which International Convention applies to arrest of ships in your country?

There are no International Conventions which apply to the arrest of ships in Israel.

3. Is there any other way to arrest a ship in your jurisdiction?

Ships or any other property of the debtor can be provisionally attached in a normal civil claim. This requires that the cause of action is within the Court’s normal civil jurisdiction and the provision of a guarantee.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

Apart from arrest or attachment no other alternatives for detaining the debtors property are available.

5. For which types of claims can you arrest a ship?

Those claims in respect of which the Admiralty Court has jurisdiction in terms of the enactments stated in Clause 1 above.

6. Can you arrest a ship irrespective of her flag?

A ship can be arrested irrespective of its flag except an Israel registered vessel cannot be arrested for

necessaries supplied in Israel.

7. Can you arrest a ship irrespectively of the debtor?

Israel law follows the Procedural Theory of Arrest where “personal” liability is required and also the “Personification” Theory where personal liability is not required. Which of the two is applicable would depend on the nature of the maritime lien or statutory right in rem alleged.

8. What is the position as regards sister ships and ships in associated ownership?

It is not possible to arrest sister ships and ships in associated ownership. It is possible to attach same. See Clause 3 above. In the case of ships in associated ownership, attachment would be subject to “lifting the corporate veil”.

Notwithstanding the foregoing, recently arrest of sister ships or ships in associated ownership have been ordered by the Admiralty Court, subject to the provision of security. These have been in “Interlocutory” Decisions. As yet there have not been any definitive Judgements in this regard.

9. What is the position as regards Bareboat and Time-Chartered Vessels?

A ship can be arrested for an obligation incurred by a Bareboat or Time Charterer.

It should be noted that the Israel Courts recognise choice of law clauses or would apply the principles of international private law, as the case may be, to determine the “applicable” law governing the foreign lien or statutory right in rem and would determine whether or not an arrest can be made say for a Time Charterer’s obligation in accordance with the principles of such “applicable” law.

10. Do your Courts require counter-security in order to arrest a ship?

Not normally, only in exceptional cases where the Court has material doubts as to the cause of action as same appears from the documentation filed in support of the Arrest.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

For Arrest purposes the Courts make no distinction between the historical maritime liens which are embodied in the 1840 and 1861 Admiralty Acts and the additional maritime liens (which are in effect statutory claims *in rem*) constituted by the Section 40 of the Shipping Law 1960. See Clause 1 above.

12. Does you country recognise maritime liens? Under which International Convention, if any?

Yes, as in Clause 1.1 above. None of the International Arrest Conventions apply in Israel as a matter of ratification or accession.

However as the Israeli Shipping Law mentioned in clause 1 above follows, in clause 41, part of the International Convention for the Unification of Certain Rules of Law Relating to Maritimes Liens and Mortgages 1926 and as the Court itself was established by and according to English Law and the Admiralty Court in fact follows both, it may well be arguable to ask the Court to follow a relevant Convention on a specific matter, as a matter of customary law.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Normally one day.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA is not obligatory. The Claimant must furnish an Affidavit which should clearly set out the cause of action and the documents in support thereof should be attached to the Affidavit.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

For the Arrest Application and Order no original documents are required, but the originals would have to be produced if the claim proceeds to trial.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The Court will only accept jurisdiction if the Claim in Rem is recognised under the laws mentioned in Clause 1 above. The Application for Arrest is ancillary to the Claim in Rem which means that if there is no jurisdiction over the Claim in Rem – an arrest cannot be affected.

17. What is the procedure to release a ship from arrest?

The ship can be released from arrest by successfully contesting the alleged grounds of arrest or the Courts jurisdiction or by providing an acceptable guarantee.

18. What type of security needs to be placed for the release?

The usual securities acceptable to the Court are a P+I LOU issued by one of the International Group of P&I Clubs or a bank guarantee issued by an Israeli bank.

19. Does security need to cover interest and costs?

Yes. The amounts are a question for the Courts discretion.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

See 18 above.

21. How long does it take to release the ship?

If security is provided as above, a matter of day or so. If the arrest is contested for substantive or procedural reasons, the Court will attempt to resolve the matter as soon as possible but if the issues are complex this may take up to a week to ten working days.

22. Is there a procedure to contest the arrest?

Yes, as described in clause 17 above.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

After preliminary hearings the matter is normally concluded within one year as from the date of filing the Claim in Rem. As a matter of practice the Arrest in itself normally determines the matter.

24. Do the Courts of your country acknowledge wrongful arrest?

The Court can award damages for wrongful arrest if the arrest or attempted arrest is malicious or grossly negligent.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Corporate veil can be lifted in circumstances of fraud, deceit or maliciousness.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

A ship can be sold *pendente lite* if it can be shown that the continuation of the arrest will substantially affect the value of the ship. In this case the net sale proceeds are regarded as having substituted the ship for all purposes, including the eventual determination of the validity of the claims *in rem* and the priorities.

**John Harris established the legal firm of J. Harris & Co in 1977. The firm is dedicated exclusively to the practice of Maritime and Admiralty law. The firm regularly receives a "top tier" ratings from independent legal rating entities including Legal 500, Dun & Bradstreet and BdiCoface.*

**Adv. Yoav Harris graduated in 1999 "summa cum laude" from the law faculty of Haifa University and specialises in maritime law and commercial litigation. He is a partner in the Israeli international law firm of "Doron, Tikotzky" and is the head of their maritime law department.*

The two legal offices, John Harris & Co. and Doron, Tikotzky comprise a joint shipping law group which is supported by further professional and para-legal staff.

According to Legal500 'the response time is excellent as is the quality of the advice', the 'best shipping lawyer in Israel', John Harris is a 'seasoned professional who can handle the biggest cases, both wet and dry' and Yoav Harris is described as "outstanding".

Both John Harris and Yoav Harris have been involved in establishing maritime law legal precedents before the Supreme Court, the highest Court of Appeal in Israel.